

mance in its non-home shopping programming be especially strong to justify receipt of a renewal expectancy.

Section 4(g)(2) provides that a renewal expectancy should not be denied "solely because their programming consisted predominantly of sales presentations or program length commer-

commercial programming would be especially important in this one-time event of a renewal following completion of the present proceeding.

2. If Home Shopping Is Found Not to Be in the Public Interest, Licensees Should Nonetheless Be Held to a Very High Standard For their Non-commercial Programming to Be Regarded as Meriting a Renewal Expectancy.

While Congress has properly given licensees a grace period to transition into a non-sales program format, Congress did not intend that this should amount to a free pass in the next license renewal. CSC describes here how the FCC should approach the issue of what renewal expectancy is to be given stations which used a home shopping format in the preceding license term. In this situation, the non-commercial programming should be of especially meritorious quality and quantity to justify the absence of entertainment, sports and other programming of greater First Amendment consequence than mere commercialization.

First, the Commission should particularly consider the amount and placement of programming designed to meet the informational and educational needs of children. Insofar as commercial matter is not - or should not be - directed to children in large amounts, the non-commercial material inserted during periods otherwise directed to the sale of products to adults is a questionable place to place programming directed to children. In the absence of any other programming likely to address the needs of children in such formats, the amount of programming specifically designed for children would be of particular importance, as would the daypart in which such programming appeared.

Another reason why the licensees' non-commercial matter would have to be especially meritorious to justify a renewal expectancy for a home shopping station is because of the absence of entertainment and other non-commercial programming other than public affairs on a typical home shopping station. In awarding renewal expectancy, the Commission has

typically looked to such programming, especially when it is of local origin. See, e.g., Valley Broadcasting Co., 3 FCC Rcd 4947, 4975 (1988) (Rev. Bd.) (news, editorializing, local sports, local entertainment, non-informational children's dramatic shows); Broadcast Communications, Inc., 93 FCC2d 1162, 1166-67 (1983) (Rev. Bd.) (local sports); Kaye-Smith Enterprises, 98 FCC2d 688, 697 (1983) (ALJ), aff'd 98 FCC2d 675 (1984) (ski reports, PSA's, music, sports updates).

C. If Home Shopping Formats Are Determined To Be Consistent With the Public Interest, No Renewal Expectancy Should Attach.

An equally important question the Commission has not specifically raised is how to treat stations predominantly devoted to sales presentations in the event the Commission should conclude that such formats are not per se contrary to the public interest.

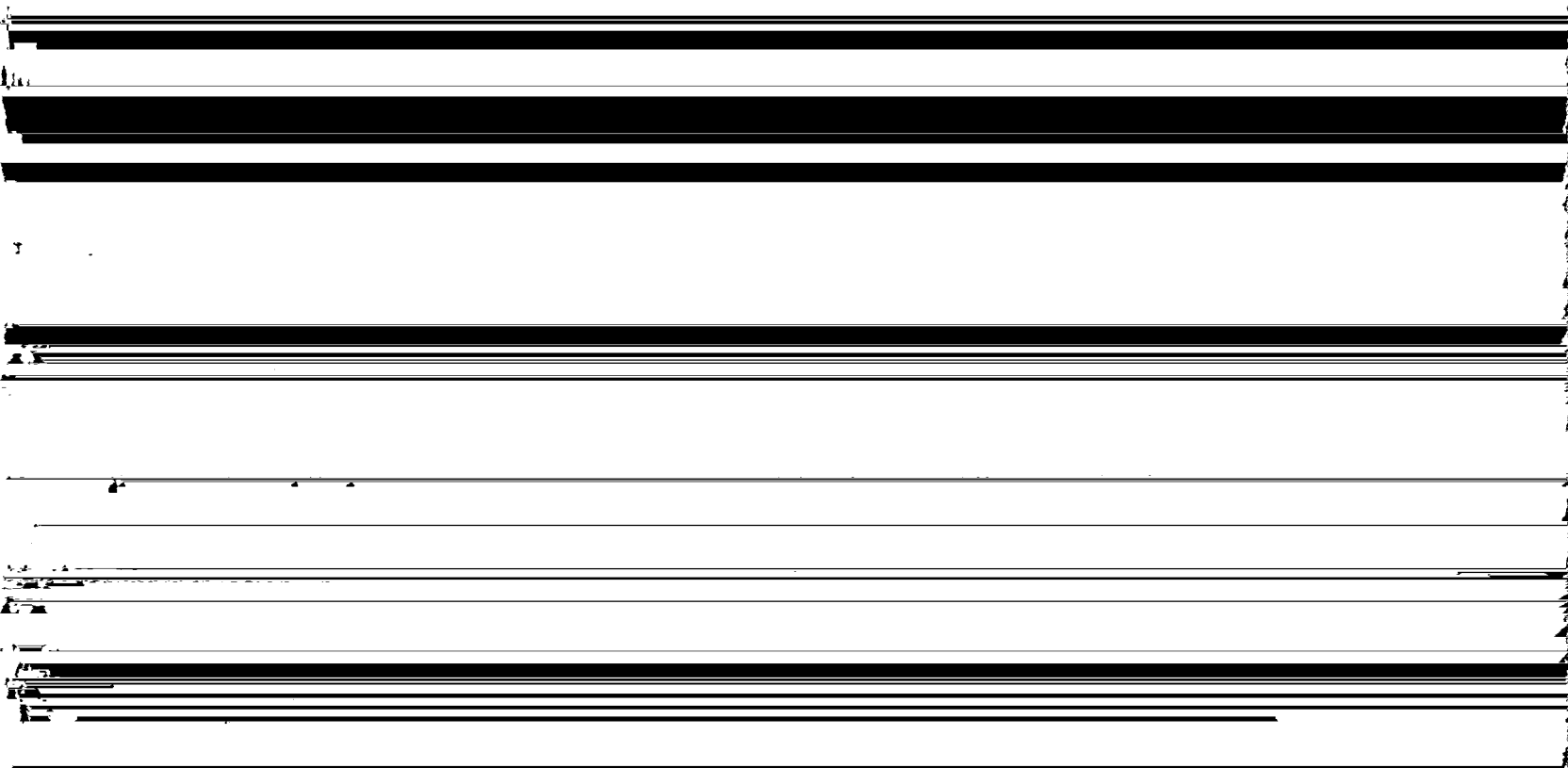

As noted above, CSC urges the Commission to rule that these formats are incompatible with the public interest. However, if the Commission should determine otherwise, it can and should make plain that stations coming within the definition adopted in this proceeding as being predominantly devoted to sales presentations will not receive a renewal expectancy.¹⁴

Home shopping formats are incompatible with "substantial service" as the Commission has defined it. Central Florida Enterprises, Inc. v. FCC, supra. To receive a renewal expectancy, a licensee's record must be above a level of mediocre service, and include service over and above what would be considered minimal. See Broadcast Communications, Inc., supra.

¹⁴The Commission also asks whether it can find that home shopping formats are not per se contrary to the public interest, yet still conclude that they are not entitled to mandatory cable carriage under Section 4 of the 1992 Act. CSC takes no position on whether the Act can be so read. However, in the event the Commission did so find, CSC suggests that most of all weight should be placed on one of the criteria the Commission has suggested to be employed after such a determination. That factor is the amount of commercial matter which is carried. Under this approach, the Commission could reward lower amounts of commercialization with the benefit of must carry rights, and thereby give incentives for non-commercial programming.

Two special considerations arise here. First, when the vast preponderance of programming is merely commercial speech, the Commission must find greater value in the limited amount of non-commercial matter carried. This is addressed above.

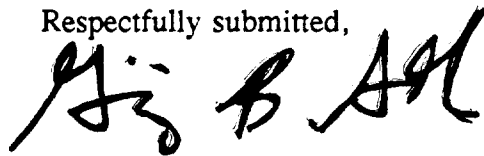
Second, the Commission can and should find that excessive commercialization, standing alone, will be treated as a significantly detrimental factor that diminishes programming which might otherwise come close to or meet the standard that would entitle receipt of a renewal expectancy. As is shown in these comments, excessive commercialization is contrary to the public interest as it has been conceived from the very inception of the Communications Act



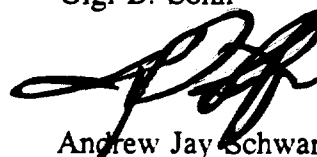
the brief interludes between sales presentations. It is the quantity of commercialization which should direct the Commission in this proceeding. It is now clear that marketplace forces are insufficient to meet the Commission's public interest mandate of limiting commercialization. To encourage news, public affairs, entertainment, sports and other programming addressing social, political, esthetic and other interests, the Commission can and should reimpose an outer limit on the amount of commercialization it will tolerate, and take regulatory steps to implement this measure.

Must carry is an extraordinary benefit predicated on the notion that broadcasters serve the public interest. It is a perversion of the public interest standard to read it as permitting more than 90% of broadcast time to commercial matter, and it is even more outrageous to reward such formats with the additional advantage of must carry.

Respectfully submitted,



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